

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**MARC ALLEN KILMER,**

Plaintiff,

v.

**CIVIL ACTION NO. 3:12-CV-55  
(GROH)**

**CHRIS McCULLEY, Deputy;  
PERRY S. LAYNE, Deputy;  
GREGORY JENKINS; THE  
HONORABLE CHRISTOPHER  
WILKES, Judge; and GREGORY  
JONES, Prosecutor,**

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION  
WITH REGARD TO PLAINTIFF'S §1983 COMPLAINT**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on August 29, 2012 [Doc. 18]. In that filing, the Magistrate Judge recommended that this Court dismiss with prejudice the Plaintiff's Complaint under 28 U.S.C. §§1915A and 1915(e) for failure to state a claim upon which relief can be granted as it relates to Defendants Christopher Wilkes, Judge; Gregory Jones; Prosecutor; Gregory Jenkins; and Chris McCulley, Deputy. However, the Magistrate Judge further recommended that Defendant Perry Layne be served with a twenty-one (21) day summons.

Pursuant to 28 U.S.C. §636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. However,

the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. §636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Objections to Magistrate Judge Kaull's R & R were due within fourteen (14) days of being served with a copy of the same, pursuant to 28 U.S.C. §636(b)(1) and FED. R. CIV. P. 72(b). The docket reflects that service was accepted by the Plaintiff on September 4, 2012 [Doc. 20]. The Plaintiff did not file any objections to the R & R. Accordingly, this Court will review the Report and Recommendation for clear error.

Upon careful review of the Report and Recommendation, it is the opinion of this Court that the Magistrate Judge's **Report and Recommendation [Doc. 18]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the Magistrate Judge's report. Accordingly, the Court hereby **DISMISSES WITH PREJUDICE** this case as it relates to Defendants Christopher Wilkes, Judge; Gregory Jones, Prosecutor; Gregory Jenkins; and Chris McCulley, Deputy. Defendant Perry Layne is hereby **ORDERED** to be served with a twenty-one (21) day summons.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a true copy to the *pro se* petitioner.

**DATED:** September 27, 2012.



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GINA M. GROH  
UNITED STATES DISTRICT JUDGE